

MEMORANDUM

December 14, 2005

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: GORDON W. TRASK
Principal Deputy County Counsel
Law Enforcement Services Division

RE: **PharmChem Inc. v. County of Los Angeles**
Norwalk Superior Court Case No: VC 044584

DATE OF
INCIDENT: August and September 2004

AUTHORITY
REQUESTED: \$100,000


COUNTY
DEPARTMENT: Probation Department

CLAIMS BOARD ACTION:


☒ Approve

☐ Disapprove

☐ Recommend to Board of
Supervisors for Approval


_____, Chief Administrative Office
ROCKY A. ARMFIELD

ABSENT
ABSTAIN
_____, County Counsel
JOHN F. KRATTLI


_____, Auditor-Controller
MARIA M. OMS

on January 10, 2006

SUMMARY

This is a recommendation to settle for \$100,000 a breach of contract action brought by PharmChem Inc. against the County of Los Angeles.

LEGAL PRINCIPLE

A public entity may be liable for damages if it breaches a valid contract, and the breach causes damages.

SUMMARY OF FACTS

The County had a contract with PharmChem from September 1, 1995, through August 31, 2000, for PharmChem to provide drug abuse testing services for the Probation Department. One of the terms of the contract required PharmChem to provide "transmittal" forms at no expense to the County. However, over the course of the five-year contract, the County did pay for specially prepared "Chain of Custody" forms. "Chain of Custody" forms were not identified or defined in the contract.

On September 1, 2000, the County entered into a new five-year contract with PharmChem with the same terms and conditions as the previous contract. In 2004, the Probation Department conducted an internal audit of the contract, and made a determination that the "Chain of Custody" forms were "transmittal" forms, so the County should not have been paying for them. During that four-year period, the County had paid PharmChem \$149,372.96 for the "Chain of Custody" forms. In August and September 2004, the County withheld that amount in payments otherwise due to PharmChem.

PharmChem, which is now a dissolved corporation winding up its business, filed a breach of contract lawsuit against the County for withholding the \$149,372.96.

DAMAGES

Should this matter proceed to trial, the potential damages are as follows:

Withheld amount	\$149,372.96
Interest	<u>\$ 15,000.00</u>
Total	<u>\$164,372.96</u>

The proposed settlement calls for the County to pay PharmChem \$100,000 for all of its claims for damages, costs, and attorney's fees.

STATUS OF CASE

This case is set for trial on July 10, 2006. Expenses incurred by the County in defense of this action are in-house attorney's fees of \$3,318.

EVALUATION

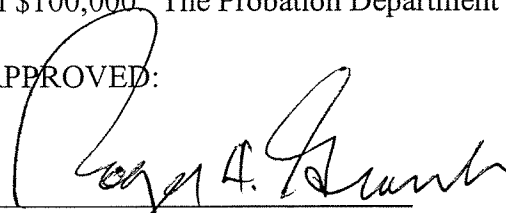
This is a case of probable liability. Although the County could argue that the "Chain of Custody" forms should be considered "transmittal" forms, the County's conduct during the course of the first five-year contract and the first four years of the next contract indicate otherwise.

The County paid PharmChem for the "Chain of Custody" forms for the entire five-year term of the original contract. When PharmChem bid on the new five-year contract in September 2000, it did so with the belief and expectation that the "Chain of Custody" forms were not "transmittal" forms, based on the County's conduct during the first contract. The County continued to pay PharmChem for four more years before making a determination that the "Chain of Custody" forms were "transmittal" forms. It is unlikely a jury is going to penalize PharmChem for relying on the County's nine-year history of paying for the forms.

Finally, even if the term "transmittal" form were found to be an ambiguous term, ambiguous terms in a contract are construed against the party who drafted the contract, which in this case was the County.

Therefore, we recommend a settlement of this matter in the amount of \$100,000. The Probation Department concurs in the recommendation.

APPROVED:



ROGER H. GRANBO
Assistant County Counsel

GWT:bl